

### **REMARKS**

Claims 1-13 and 25-36 remain pending in the present application. Applicant has amended Claims 1, 12, 32, 33, 35 and 36. Applicant thanks the Examiner for the time to conduct the Examiner interview on October 30, 2007 and for further reconsideration of the claims presented herein. Applicant still maintains that various of the Examiner's cited rejections are missing pre-existing elements required by Applicant's corresponding claims, prior to the amendments made herein.

#### **I. 35 U.S.C. § 102 Rejection of Claims**

The Examiner has rejected Claims 35-36 under 35 U.S.C. § 102(b) as being anticipated by Sano *et al.* Applicant respectfully traverses this ground of rejection. Additionally, Applicant has amended Claims 35-36 per the Examiner interview conducted on October 30, 2007.

Initially, Applicant respectfully reminds the Examiner that three claimed elements throughout the claim set, the jaws, the base plate and the camming surface are inter-related to provide that movement of the base plate is related to movement of the jaws through some preselected distance. Such interrelation between the alleged elements of the prior art does not exist in the Examiner's cited reference.

In regards to Claim 35, it is respectfully asserted to the Examiner that the Sano *et al.* reference fails to teach bats of varying diameter at a preselected elevation. Further, the Sano *et al.* reference fails to teach positioning the center points of the bats at preselected longitudinal and latitudinal positions as claimed in Claim 35. Additionally, per the Examiner's comments during the interview, Applicant has amended Claim 35 to recite that the "fixture compris[es] a pair of

jaws, a camming surface engaging [the] pair of jaws and a base plate, [the] base plate movable relative to a fixture base, [the] camming surface and [the] jaws.” Sano *et al.* fails to teach a camming surface. Further, this interrelation of movement of the jaws, base plate and base and camming surface fails to be taught or suggested, as discussed with the Examiner during the phone interview of October 30, 2007.

Regarding Claim 36, Sano *et al.* fails to teach base plates being slidable relative to the base and to the opposed jaws. Further, the reference fails to teach that opposed jaws having a base plate camming surface engaging the base plate causing the jaws to move a preselected distance relative to the distance moved by the base plate. In addition, Applicant has amended Claim 36 to recite that the base plate camming surface extends from the opposed jaws and engages the base plate. This amendment clarified for the Examiner that the base plate and base plate camming surface were distinct elements of the claim and not the same part. Applicant hopes this clarifies any perceived confusion.

## **II. 35 U.S.C. § 103 Rejection of Claims**

The Examiner has rejected Claims 1-13 and 25-34 under 35 U.S.C. § 103(a) as being unpatentable over Sano *et al.* in further view of Comulada *et al.* Applicant respectfully traverses this ground of rejection. Additionally, Applicant has amended various independent claims which are further believed to place the case in condition for allowance.

As previously indicated, Claim 1 requires that the base plate cause at least one jaw to move a preselected distance relative to a distance moved by the base plate. To the contrary, Sano *et al.* fails to teach that the base plate causes movement of the at least one jaw a preselected distance relative to a distance moved by the base plate. In fact, Figure 11 of Sano *et al.* fails to

teach or disclose any interrelation between the movement of the alleged base plate (plunger 104) and the jaws 101. This is due to the fact that the reference fails to comprise a camming surface as presently claimed. Comulada *et al.* fails to aid this lack of teaching.

Additionally, with regard to Claim 1, Applicant has further claimed a bat element which engages the at least one jaw and the base plate on the leveling fixture moves the bat to a preselected position. Sano *et al.* fails to teach a bat as does Comulada *et al.*

Finally, Applicant has also amended Claim 1 to recite that the base plate camming surface is angled. Applicant thanks the Examiner for this suggestion as further distinguishing the prior art of record.

The Examiner has also rejected Claim 25 as being unpatentable over Sano *et al.* in view of Comulada *et al.* Applicant respectfully traverses this ground of rejection.

Claim 25 currently requires that first and second jaws each have inwardly directed base plate camming surfaces for directing the base plate a preselected distance in relation to movement of the jaws. The Sano *et al.* reference fails to teach any camming surfaces directed inwardly from the first and second jaws which direct the base plate a preselected distance in relation to movement of the jaws. Comulada *et al.* fails to aid in this lack of teaching. Since this element fails to be taught by cited art, Applicant respectfully requests this ground of rejection be withdrawn.

With regard to Claim 32, the claim recites at least one base plate moving relative to movement of the at least one jaw. The Sano *et al.* reference fails to teach a base plate which is moveable relative to the movement of the at least one jaw, as clearly shown in Figure 7 of the cited reference. With regard to Figure 11, although the Examiner alleges that element 104 is a

base plate, the movement of plunger 104 is unrelated to the jaw 101 movement as there are no interconnecting parts and more specifically no parts which correspond to the claimed camming surface causing the related movement of the jaws to the base plate.

Also, with regard to Claim 32, the instant claim recites a base plate slidable through a vertical plane a distance relative to the sliding of the at least one jaw. Again as previously indicated, Sano *et al.* fails to teach any base plate which is slidable relative to the sliding of at least one jaw, contrary to the allegations by the Examiner. The plunger 104 and the jaws 101 have unrelated movement.

Finally, Applicant has amended Claim 32 to positively recite the angled camming surface which interrelates the movement of the jaw and base plate. As previously indicated, such element is not taught or suggested in the prior art references cited.

With regard to Claim 33, Applicant has amended the Claim per the Examiner's suggestion to recite that the camming surface is angled and further to require that the base plate moves relative to the base, jaw and camming surface. Such camming plate is not taught or suggested by Sano *et al.* and further such movement between parts is also not taught or suggested.

With regard to Claim 34, the present claim requires that the first and second jaws are in slidable contact with the base plate. The Examiner has recited that element 104 (the plunger) is the alleged base plate. However, the jaws 101 are clearly not in slidable contact with the plunger 104, contrary to the claimed invention. Further, Claim 34 requires that the first and second jaw slidably receive the bat and cause the base plate to modify the vertical position of the bat to maintain an equal distance of the bat to the marking device. As indicated to the Examiner during

the interview and reiterated herein, the plunger 104 is merely used with in a sensor to detect presence of a tube. See Col. 10, ll. 48-52. The plunger 104 fails to adjust the height of any tube since the movement of the plunger 104 is unrelated to the movement of the jaws 101.

Additionally, the Examiner has made multiple rejections of Claims 1-13 and 25-34 as being unpatentable over Sano *et al.* in further view of Comulada *et al.* and further in view of Baum. The Examiner alleges that Baum discloses the use of laser cutting and the formation of a baseball with a logo. Applicant respectfully traverses this ground of rejection.

Applicant directs the Examiner to review the previously recited arguments which are directly related to the previously described §103 rejections. In short Sano *et al.* fails to teach or suggest various claim elements required by the currently pending claim set. Additionally, the Examiner utilizes the reference Baum which is alleged to teach cutting of a baseball (bat) with a logo by a laser. The Examiner is directed to Column 4, ll. 55-65 of the Baum reference which states the following, “[t]he veneer sheet 42 is cut from a flat veneer stock by a laser cutting, die cutting...or like process so as to have the appropriate contour to cover half of a complete bat....One of the two veneer sheets used to form the outer layer of the bat is preferably preprinted with a logo 50 while it is flat.” The pre-printed logo is further described as silk screened or branded. Accordingly, the Examiner’s assertion that the use of a laser is utilized to form a logo on a baseball (bat) is incorrect. Instead, the Baum reference teaches that the logo is preprinted on a veneer sheet which may be cut by lasers to fit over a barrel portion of the bat. Such process is wholly different from the claimed use.

For these reasons, Applicant again respectfully requests that the Examiner removed these grounds of rejection and expedite this case to issuance.

**CONCLUSION**

Applicant attorney believes that the instant application is currently in condition for allowance and therefore respectfully requests that the Examiner allow the pending claims. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney would appreciate the courtesy of a telephone call at (502) 584-1135 to resolve such remaining issues.

Respectfully submitted,

**MIDDLETON REUTLINGER**

**/James E. Cole/**

**Date: Oct. 31, 2007**

---

James E. Cole, Reg. No. 50,530  
2500 Brown & Williamson Tower  
Louisville, KY 40202  
(502) 608-2746 direct dial  
(502) 561-0442 fax  
[jcole@middreut.com](mailto:jcole@middreut.com)